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09/824,493	04/02/2001	Timothy G. Curray	SPL-32	9371

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INTELLECTUAL PROPERTY LAW DEPARTMENT
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EXAMINER	
JACOBS, LASHONDA T	
ART UNIT	PAPER NUMBER
2157	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/824,493	CURRAY ET AL.	
	Examiner	Art Unit	
	LaShonda T. Jacobs	2157	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *August 16, 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-41* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-41* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *8/16/2007*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

This is a Final Office Action in response to Amendment/Request for Reconsideration filed on August 16, 2007. Claims 1-41 are presented for further examination.

Affidavits/Declarations

1. The affidavit filed on August 16, 2007 under 37 CFR 1.131 has been considered but is ineffective to overcome the Iavergne et al reference (U.S. Pat. No. 7,181,517).

2. The Applicants' declaration is attempting to prove conception of the invention prior to the date of June 2, 2000 (the effective date for Iavergne et al). However, conception alone is not enough. Conception of the invention prior to the effective date of the reference coupled with due diligence from prior to the reference date to the filing date of the application establishes prior invention.

3. The Examiner has reviewed the submitted evidence in its entirety and does not find any support for conception. For example, it is not obvious to the Examiner where the claimed "a processor capable of functioning as a master device; a communications interface capable of gathering, under control of said processor in real-time information from one or more slave devices and said processor and said communications interface further being operative for presenting said real-time information in a format useable by Hypertext Markup Language (HTML) pages" is supported by exhibits J, K, L, M, N and O. As such it appears that Applicant has not shown a conception of invention. This is a single example and is not meant to be comprehensive and exhaustive. Applicants has the burden of establishing conception.

MPEP § 715.07(a) regarding the diligence requirement.

III. >< THREE WAYS TO SHOW PRIOR INVENTION

The affidavit or declaration must state FACTS and produce such documentary evidence and exhibits in support thereof as are available to show conception and completion of invention in this country or in a NAFTA or WTO member country (MPEP § 715.07(c)), at least the conception being at a date prior to the effective date of the reference. Where there has not been reduction to practice prior to the date of the reference, the applicant or patent owner must also show diligence in the completion of his or her invention from a time just prior to the date of the reference continuously up to the date of an actual reduction to practice or up to the date of filing his or her application (filing constitutes a constructive reduction to practice, 37 CFR 1.131).

As discussed above, 37 CFR 1.131(b) provides three ways in which an applicant can establish prior invention of the claimed subject matter. The showing of facts must be sufficient to show:

(A) reduction to practice of the invention prior to the effective date of the reference; or

(B) conception of the invention prior to the effective date of the reference coupled with due diligence from prior to the reference date to a subsequent (actual) reduction to practice; or

(C) conception of the invention prior to the effective date of the reference coupled with due diligence from prior to the reference date to the filing date of the application (constructive reduction to practice).

4. Applicant has made only a general allegation of diligence and in the most recently filed affidavit no portion of the exhibits appears to address the matter. Applicants. should review the guidelines for "Reasonable Diligence" found in MPEP 715.07 (a) and 2138.06. Any statements should be accompanied by showings, not just pleadings (i.e. dated memos, emails, etc.).

5. The critical period for which diligence must be shown is just before June 2, 2000 (the effective date of the Iavergne et al reference) until April 2, 2001 the filing date of the instant application. It appears that the evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Iavergne et al reference to a constructive reduction to practice of the instant application filed on April 2, 2001. Applicant fails to establish diligence because there is no documentation that shows what was being done each day from June 2, 2000 (effective date of the reference) until April 2, 2001 the filing date of the instant application. The entire period during which diligence is required must be accounted for by either affirmative acts or acceptable excuses [See MPEP 2138.06].

6. The affidavit/declaration submitted by the applicant does not show how the exhibits establish conclusions of conception and diligence. Therefore, Iavergne et al reference does overcome the effective date of the applicant's invention.

7. Therefore, the rejection is maintained.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims **1-41** are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosner et al (hereinafter, "Rosner", US Pat. No. 6,298,376) in view of Iavergne et al (hereinafter, "Iavergne", U.S. Pat. No. 7,181,517).

As per claim **1**, Rosner discloses an Ethernet communications system for a power monitoring system, said Ethernet communications system comprising an Ethernet communication device operative in association with a power monitoring device, said Ethernet communications device including:

- a processor capable of functioning as a master device (col. 2, lines 45-53 and col. 3, lines 27-40); and
- a communications interface capable of gathering, under control of said processor real-time information from one or more slave devices (col. 1, lines 60-61, col. 2, lines 45-53 and col. 3, lines 21-26).

However, Rosner does not explicitly disclose:

- said processor and said communications interface further being operative for presenting said real-time information in a format useable by Hypertext Markup Language HTML pages.

Iavergne discloses a browser-enabled remote user interface for telecommunications power system comprising:

- said processor and said communications interface further being operative for presenting said real-time information in a format useable by Hypertext Markup Language HTML pages (abstract, col. 2, lines 5-18, lines 32-51, col. 4, lines 42-48, col. 7, lines 8-17 and col. 8, lines 29-44; Iavergne discloses monitoring and controlling a power system from a remote browser application in which real-time data is presented through the Internet).

Given the teaching of Iavergne, it would have been obvious to one of ordinary skill in the art to modify Rosner by using an applet to display and monitor real time information via the

Internet thus allowing a user to fully interact with the master control unit and view real-time data in a timely and efficient manner.

As per claim **9**, Rosner discloses an industrial power metering system comprising:

- a power monitoring device (abstract and col. 2, lines 45-53);
- gathering real-time information from said power monitoring device (col. 1, lines 60-61, col. 2, lines 45-53 and col. 3, lines 21-26);
- dynamically gathering, formatting and verifying real-time information from the power monitoring device (col. 1, lines 60-61, col. 2, lines 45-53 and col. 3, lines 21-26).

However, Rosner does not explicitly disclose:

- an Ethernet communications device operatively coupled with said power monitoring device;
- said Ethernet communications device including a processor and a communications interface; and
- a web server capable of communicating through said communications interface.

Iavergne discloses a browser-enabled remote user interface for telecommunications power system comprising:

- an Ethernet communications device operatively coupled with said power monitoring device (col. 3, lines 25-38 and col. 4, lines 25-37);
- said Ethernet communications device including a processor and a communications interface (col. 3, lines 25-38 and col. 4, lines 25-37); and
- a web server capable of communicating through said communications interface (col. 3, lines 56-65).

Given the teaching of Iavergne, it would have been obvious to one of ordinary skill in the art to modify Rosner by including a web browser and Ethernet communications thus allowing a user/client to connect to the server to in order to communicate and receive real time information in a timely and efficient manner.

As per claims **17** and **31**, Rosner discloses an Ethernet communications method for a power monitoring system, said method comprising:

- gathering real-time information from said power monitoring device (col. 1, lines 60-61, col. 2, lines 45-53 and col. 3, lines 21-26).

However, Rosner does not explicitly disclose:

- presenting said real-time information in a format useable by Hypertext Markup Language pages.

Iavergne discloses a browser-enabled remote user interface for telecommunications power system comprising:

- presenting said real-time information in a format useable by Hypertext Markup Language pages (abstract, col. 2, lines 5-18, lines 32-51, col. 4, lines 42-48, col. 7, lines 8-17 and col. 8, lines 29-44; Iavergne discloses monitoring and controlling a power system from a remote browser application in which real-time data is presented through the Internet).

Given the teaching of Iavergne, it would have been obvious to one of ordinary skill in the art to modify Rosner by using an applet to display and monitor real time information via the Internet thus allowing a user to fully interact with the master control unit and view real-time data in a timely and efficient manner.

As per claim **24**, Rosner discloses an industrial power metering method comprising.

- monitoring power (col. 1, lines 60-61, col. 2, lines 45-53 and col. 3, lines 21-26); and
- gathering real-time information from said power monitoring (col. 1, lines 60-61, col. 2, lines 45-53 and col. 3, lines 21-26);.

However, Rosner does not explicitly disclose:

- dynamically gathering, formatting, verifying and communicating real-time information from the power monitoring device in a format usable by HTML pages.

Iavergne discloses a browser-enabled remote user interface for telecommunications power system comprising:

- dynamically gathering, formatting, verifying and communicating real-time information from the power monitoring device in a format usable by HTML pages (abstract, col. 2, lines 5-18, lines 32-51, col. 4, lines 42-48, col. 7, lines 8-17 and col. 8, lines 29-44; Iavergne discloses monitoring and controlling a power system from a remote browser application in which real-time data is presented through the Internet).

Given the teaching of Iavergne, it would have been obvious to one of ordinary skill in the art to modify Rosner by using an applet to display and monitor real time information via the Internet thus allowing a user to fully interact with the master control unit and view real-time data in a timely and efficient manner.

As per claim **38**, Rosner discloses an Ethernet communications card apparatus for a power monitoring device, said Ethernet communications card comprising;

- a processor capable of functioning as a master device (col. 2, lines 45-53 and col. 3, lines 27-40);

- a communications interface capable of gathering, under control of said processor real-time information from one or more slave devices (col. 1, lines 60-61, col. 2, lines 45-53 and col. 3, lines 21-26).

However, Rosner does not explicitly disclose:

- said processor and said communications interface being operative for presenting said real-time information in a format useable by Hypertext Markup Language (HTML) pages.

Iavergne discloses a browser-enabled remote user interface for telecommunications power system comprising:

- said processor and said communications interface being operative for presenting said real-time information in a format useable by Hypertext Markup Language (HTML) pages (abstract, col. 2, lines 5-18, lines 32-51, col. 4, lines 42-48, col. 7, lines 8-17 and col. 8, lines 29-44; Iavergne discloses monitoring and controlling a power system from a remote browser application in which real-time data is presented through the Internet).

Given the teaching of Iavergne, it would have been obvious to one of ordinary skill in the art to modify Rosner by using an applet to display and monitor real time information via the Internet thus allowing a user to fully interact with the master control unit and view real-time data in a timely and efficient manner.

As per claims **2**, **10**, **18**, **25** and **32**, Rosner discloses wherein said processor is further capable of:

- functioning as a slave device (col. 2, lines 45-53).

As per claims **3**, **11**, **19**, **26** and **33**, Rosner discloses:

- wherein said processor and said slave device are coupled, by said communications interface, in a daisy chain and wherein said Ethernet communications device is capable of using any of a plurality of protocols for either full duplex or half duplex communications, including SyMax, Modbus and Jbus (col. 2, lines 45-53 and col. 3, lines 4-13).

As per claims **4**, **12**, **20**, **27** and **34**, Rosner discloses the invention substantially as claims discussed above.

However, Rosner does not explicitly disclose:

- a server coupled with said communications interface, said server operating for sending data to a browser for dynamically formatting and verifying real-time data gathered by said processors and communications interfaces using JavaScript and VB script.

Iavergne discloses a browser-enabled remote user interface for telecommunications power system comprising:

- a server coupled with said communications interface, said server operating for sending data to a browser for dynamically formatting and verifying real-time data gathered by said processors and communications interfaces using JavaScript and VB script (abstract, col. 2, lines 5-18, lines 32-51, col. 4, lines 42-48, col. 7, lines 8-17 and col. 8, lines 29-44; Iavergne discloses monitoring and controlling a power system from a remote browser application in which real-time data is presented through the Internet).

Given the teaching of Iavergne, it would have been obvious to one of ordinary skill in the art to modify Rosner by using an applet to display and monitor real time information via the

Internet thus allowing a user to fully interact with the master control unit and view real-time data in a timely and efficient manner.

As per claims **5**, **21**, **28** and **35**, Rosner discloses the invention substantially as claims discussed above.

However, Rosner does not explicitly disclose:

- a server operatively coupled with said communications interface, and further including a web browser capable of accessing said server and at least one processor in communication with said server, said web browser generating a login, and said processor responding to said login by generating an access token for said browser for permitting access by said browser for a predetermined amount of time.

Iavergne discloses a browser-enabled remote user interface for telecommunications power system comprising:

- a server operatively coupled with said communications interface, and further including a web browser capable of accessing said server and at least one processor in communication with said server, said web browser generating a login, and said processor responding to said login by generating an access token for said browser for permitting access by said browser for a predetermined amount of time (abstract, col. 2, lines 5-18, lines 32-51, col. 4, lines 42-48, col. 7, lines 8-17 and col. 8, lines 29-44; Iavergne discloses monitoring and controlling a power system from a remote browser application in which real-time data is presented through the Internet).

Given the teaching of Iavergne, it would have been obvious to one of ordinary skill in the art to modify Rosner by using an applet to display and monitor real time information via the

Internet thus allowing a user to fully interact with the master control unit and view real-time data in a timely and efficient manner.

As per claims **6**, **14**, **22**, **29**, **36** and **39**, Rosner discloses the invention substantially as claims discussed above.

However, Rosner does not discloses:

- a single physical interface chip capable of supporting dual physical Ethernet media types.

Iavergne discloses a browser-enabled remote user interface for telecommunications power system comprising:

- a single physical interface chip capable of supporting dual physical Ethernet media types (col. 3, lines 25-38 and col. 4, lines 25-37).

Given the teaching of Iavergne, it would have been obvious to one of ordinary skill in the art to modify Rosner by including a web browser and Ethernet communications thus allowing a user/client to connect to the server to in order to communicate and receive real time information in a timely and efficient manner.

As per claims **7**, **15**, **23**, **30**, **37** and **40**, Rosner discloses the invention substantially as claims discussed above.

However, Rosner does not explicitly disclose:

- a fast Ethernet transceiver which provides a media independent interface for attachment to a 10/100 media access controller, and is capable of directly driving an N45 interface through magnetics and termination resistors and also provides a pseudo-ECL interface for use with 100Base Fx fast fiber transceivers.

Iavergne discloses a browser-enabled remote user interface for telecommunications power system comprising:

- a fast Ethernet transceiver which provides a media independent interface for attachment to a 10/100 media access controller, and is capable of directly driving an N45 interface through magnetics and termination resistors and also provides a pseudo-ECL interface for use with l00Base Fx fast fiber transceivers (col. 3, lines 25-38 and col. 4, lines 25-37).

Given the teaching of Iavergne, it would have been obvious to one of ordinary skill in the art to modify Rosner by including a web browser and Ethernet communications thus allowing a user/client to connect to the server to in order to communicate and receive real time information in a timely and efficient manner.

As per claims **8**, **16** and **41**, Rosner discloses the invention substantially as claims discussed above.

However, Rosner does not explicitly disclose:

- wherein said processor includes a Hypertext Transfer Protocol (HTTP) server for facilitating communications with an internet browser.

Iavergne discloses a browser-enabled remote user interface for telecommunications power system comprising:

- wherein said processor includes a Hypertext Transfer Protocol (HTTP) server for facilitating communications with an internet browser (abstract, col. 2, lines 5-18, lines 32-51, col. 4, lines 42-48, col. 7, lines 8-17 and col. 8, lines 29-44; Iavergne discloses

monitoring and controlling a power system from a remote browser application in which real-time data is presented through the Internet).

Given the teaching of Iavergne, it would have been obvious to one of ordinary skill in the art to modify Rosner by using an applet to display and monitor real time information via the Internet thus allowing a user to fully interact with the master control unit and view real-time data in a timely and efficient manner.

Response to Arguments

10. Applicant's arguments filed August 16, 2007 have been fully considered but they are not persuasive.

The Office Notes the following arguments:

a. Applicant has submitted a Declaration to overcome the Iavergne et al reference. However, the Declaration is ineffective to overcome the Iavergne et al reference and the rejection still remains (see affidavit/declaration section above).

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaShonda T. Jacobs whose telephone number is 571-272-4004. The examiner can normally be reached on 8:30 A.M.-5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 571-272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LaShonda T Jacobs
Examiner
Art Unit 2157

LaShonda Jacobs

ltj
October 22, 2007